



AIA Best Practices: Discrimination: Understand your firm's responsibility under U.S. law

Reviewing the Guides to Equitable Practice

Contributed by AIA Staff

Summary

In the United States, federal law prohibits discrimination in certain contexts. In the employment arena, both disparate treatment and disparate impact employment discrimination against protected groups are prohibited. Review key details regarding employment discrimination and claims to learn how to avoid negative consequences as shared in the [Guide to Equitable Practice on Intercultural Competence](#).

Discrimination

Interactions that take place in the practice of architecture may be unethical or unlawful if they reflect intentional or unintentional discrimination. Reducing bias and increasing intercultural awareness and opportunities for open communication in the workplace can help prevent discrimination. All forms of discrimination—whether or not they meet legal standards of discrimination—have serious negative consequences for individuals and firms and undermine the ethical standards and ideals of our profession.

Understand the law and professional ethics

In the United States, federal law prohibits discrimination in certain contexts against someone on the basis of sex (including gender identity, sexual orientation, and pregnancy), race, ethnicity, religion, nation of origin, age, disability, genetic information, or military service. In the employment arena, both disparate treatment (intentional and generally directed at a specific individual or individuals) and disparate impact (unintentional) employment discrimination against these protected groups are prohibited.¹ Most states have additional laws prohibiting discrimination, which often include protected classes beyond those recognized at the federal level. Educational institutions are governed by Title IX, which prohibits discrimination in education based on gender and ensures equal opportunity on the basis of sex. Furthermore, all discrimination laws prohibit retaliation against employees who have engaged in “protected activity,” meaning that they have complained of actions they believe in good faith to be discriminatory, or they have supported another employee in pursuit of such a claim.

The following are some key details regarding employment discrimination and claims:

- When an employment policy or practice that appears to be neutral has a disproportionately negative effect on a protected group, it is said to have disparate or adverse impact.
- Disparate impact can result from systemic discrimination (patterns of behavior, policies, or practices that are parts of structures of an organization that create or perpetuate disadvantages).
- The majority of individual employment-discrimination claims are brought under the disparate-treatment theory, which states that an adverse employment action (for example, a failure to hire, demotion, denial of promotion, or termination) is alleged to have been based, at least in part, on the employee's membership in a protected class.
- Employee-selection procedures—especially testing, education requirements, physical requirements, and evaluations of work samples, as well as pay and promotion policies and practices—are typical topics for disparate-impact claims.
- At the federal level, an employee asserting a claim of discrimination must first “exhaust administrative remedies” before they can file a claim in court. This requires that the employee first file a charge of discrimination with the U.S. Equal Employment Opportunity Commission and obtain a right-to-sue letter. Some state discrimination laws have a similar exhaustion-of-remedies procedure, but many do not require this administrative step.
- Claims are usually decided based on the statistical analysis of data.
- If a policy or practice in question causes a disparate impact, the employer must show that it is both job related and consistent with business necessity.
- Retaliation claims are asserted in a large percentage of discrimination cases. Retaliation claims can be challenging for employers to defend—there is often an issue of whether the employee's prior complaint played some role in the employer's ultimate adverse employment decision.
- For the reason above, employers are strongly advised to carefully document their employment decisions and to take seriously all internal complaints by employees, thoroughly investigating and documenting the outcome of the investigation.

AIA Code of Ethics

The AIA Code of Ethics and Professional Conduct (2018) is explicit about discrimination:

- **Canon I, Rule 1.40I** states: “Members shall not engage in harassment or discrimination in their professional activities on the basis of race, religion, national origin, age, disability, caregiver status, gender, gender identity, or sexual orientation.”
- **Canon V, Ethical Standard 5.1** states: “Professional Environment: Members should provide their associates and employees with a fair and equitable working environment, compensate them fairly, and facilitate their professional development.”
- **Canon V, Rule 5.10I** states: “Members shall treat their colleagues and employees with mutual respect, and provide an equitable working environment.”²

Resources

Glossary Defines terms such as Compliance and Discrimination. Furnishes a shared understanding of terms related to equity, diversity, and inclusion. https://content.aia.org/sites/default/files/2020-11/AIA_Guides_Glossary_2020.pdf

Maintaining Personnel Files (AIA Best Practice) Outlines employer responsibility in maintaining complete and confidential personnel files.

Bias Interrupters: Tools for Architecture Firms Helps firm address bias in the workplace and to help make their practices more inclusive and welcoming. https://content.aia.org/sites/default/files/2021-12/AIA_Bias_Interrupters_FINAL.pdf

Building Culturally Competent Organizations Offers a Tools section with pointers on several ways for an organization to build cultural competence. <https://ctb.ku.edu/en/table-of-contents/culture/cultural-competence/culturally-competent-organizations/tools>

Diversity Toolkit: A Guide to Discussing Identity, Power and Privilege Facilitates discourse through group activities about diversity challenges: identity, power, and privilege. <https://msw.usc.edu/mswusc-blog/diversity-workshop-guide-to-discussing-identity-power-and-privilege>

Notes

1 “Title VI Legal Manual,” U.S. Department of Justice, accessed September 29, 2022, <https://www.justice.gov/crt/book/file/1364106/download>.

2 “2018 Code of Ethics and Professional Conduct,” AIA Office of General Counsel, accessed October 13, 2018, <https://www.aia.org/pages/3296-code-of-ethics-and-professional-conduct>.

Source

Guides for Equitable Practice: Intercultural Competence [guide 1], “Compliance” (pp. 12-13) (The American Institute of Architects, December 2020, second edition) https://content.aia.org/sites/default/files/2021-06/AIA_Guides_for_Equitable_Practice_01_Intercultural_Competence.pdf

This section is intended to introduce you to important legal information regarding discrimination and suggestions for maintaining a discrimination-free workplace but is not a substitute for legal advice. For such advice, we strongly urge you to consult an attorney.

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This article corresponds to:

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Chapter 02 – Diversity and Demographics

Section 01 – Diversity and Practice Management